

CALIFORNIA COASTAL COMMISSION

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W8&W9

ADDENDUM

November 2, 2020

TO: Coastal Commissioners and Interested Parties

FROM: Lisa Haage, Chief of Enforcement
Logan Tillema, Statewide Enforcement Analyst

SUBJECT: ADDENDUM TO **ITEMS NO. W8&W9** – CONSENT CEASE AND DESIST ORDER NO. CCC-20-CD-03, CONSENT RESTORATION ORDER NO. CCC-20-RO-02, (LOS ANGELES DEPARTMENT OF WATER AND POWER) FOR THE COMMISSION MEETING OF **November 4, 2020**

This addendum serves three purposes. Section I updates the record by supplementing the staff report for Consent Cease and Desist Order No. CCC-20-CD-03 and Consent Restoration Order No. CCC-20-RO-02 (“Staff Report”) with correspondence that California Coastal Commission (“Commission”) staff received after staff issued the Staff Report. Section II provides Commission staff’s responses to some of the questions raised in the recently received correspondence. Section III provides minor modifications to the Staff Report, based on updated information. This addendum is incorporated into the Staff Report and its proposed findings, so that if the Commission adopts the staff recommendation, this addendum will become a part of the Commission’s findings.

I. CORRESPONCE RECEIVED AFTER THE STAFF REPORT

The Documents received by Commission staff since issuance of the staff report on October 16, 2020, and included in this addendum, are:

1. Letter of support from the Mountains Recreation and Conservation Authority, dated October 27, 2020 (Addendum Exhibit 1)
2. Letter of support from the California Native Plant Society, dated October 19, 2020 (Addendum Exhibit 2)

3. Letter of support from the Sierra Club, Santa Monica Mountains Task Force, dated October 29, 2020 (Addendum Exhibit 3)

4. Letter of support from the Sierra Club, Save Hobo Aliso Task Force, dated October 30, 2020 (Addendum Exhibit 4)

II. SELECT RESPONSES TO CORRESPONDENCE RECEIVED

The correspondence received by staff provides general support for the enforcement action to address this matter, and staff thanks all the letter writers for their contributions to this hearing. Below, Commission staff provides specific responses to the following questions raised in the letter from the Sierra Club, Save Hobo Aliso Task Force, dated October 30, 2020 (Addendum Exhibit 4):

(1) "Who will be keeping an eye on this project as it progresses and reporting back to CCC staff?"

It is unclear which "project" is being referred to in this question. In regard to the restoration work Respondent is required to perform under the Consent Orders, the Consent Orders establish the framework to monitor and ensure the success of the restoration project.

The Consent Orders contain specific deadlines for the submittal of deliverables necessary to complete the Restoration Plan to make sure the work is completed in a timely fashion. Further, the Consent Orders require a Commission approved ecologist to create the Restoration Plan. Commission staff, including a staff ecologist, will review the Restoration Plan submitted by Respondent's ecological specialist for consistency with the restoration requirements of the Consent Orders and will only approve it once it is deemed adequate. Additionally, as a component of the Restoration Plan, the Consent Orders require Respondent to submit reports after the completion of many elements of the Restoration Plan to ensure the work was performed as required. Finally, long term monitoring is also required by the Consent Orders, which consists of four site visits per annum to inspect and maintain components of the restoration project, and Respondent must submit annual monitoring reports to Commission staff for a minimum of five years. Should the annual monitoring reports show that the restoration project is not meeting performance standards specified in the Restoration Plan, a revised or supplemental Restoration Plan is required to be submitted to address the shortcomings. In the event that Respondent fails to comply with any requirement of the Consent Orders, Commission staff can assess stipulated penalties of \$1,000 per day, per violation of the Consent Orders.

As for any work the Commission authorizes pursuant to Respondent's pending Coastal Development Permit ("CDP") application to physically replace the power poles, that work will be governed by the conditions in the permit, if approved. Additionally, the Consent Orders require Respondent to comply with any conditions in the future permit, so the stipulated penalties contained in the Consent Orders would also apply to any failure to comply with the CDP, if approved.

(2) "Has it been determined that these naturalized grasses have not and will not invade areas that should be dominated by native species? Would it be more beneficial to the native habitat to have these grasses completely eradicated during this restoration? "

The language in the Orders was drafted in close consultation with our staff biologist, Dr. Jonna Engel. Dr. Engel notes that under the restoration plan Respondent will be required to eradicate/remove/kill all the non-native species and replace them with appropriate native species to the greatest extent possible. However, eradicating naturalized grasses "completely", especially at the end of the 5-year monitoring period, is nearly impossible and the Consent Orders are drafted to reflect that reality.

(3) "Is there a specific person or department within State Parks that will be reviewing the Restoration Plan? If so, could that person/department please be identified."

We anticipate close coordination with State Parks during the implementation of the work under the Orders. Our Orders require that coordination:

"Prior to Respondent submitting the Restoration Plan, Respondent shall consult with State Parks, the owner of the majority of the Properties, to ensure that the Restoration Plan will provide the successful restoration of its property consistent with applicable requirements." Pages 4 and 5 of CCC-20-CD-03 and CCC-20-RO-02

Commission staff has been coordinating with the Senior Environmental Scientist of the Angeles District of California State Parks and would anticipate continuing to work with her and other relevant Parks' staff.

I. MODIFICATIONS

After Commission staff posted the Staff Report to the public, staff received clarifying information from the United States Fish and Wildlife Service and California State Parks that refined the acreage figures for the amount of habitat impacted by Respondent. The following modifications are made to update the Staff Report regarding (1) the total Braunton's milk-vetch critical habitat impacted by Respondent and (2) the size and description of the onsite mitigation located outside the Coastal Zone. These modifications do not alter the requirements or settlement reached in the Consent Orders, but only update the Staff Report based on the refined figures. The Consent Orders, found in Appendix A of the Staff Report, speak broadly to the impacts that occurred, and the exact acreages required to be restored under the Consent Orders will be delineated in Respondent's restoration and mitigation plan, as required by the Consent Orders.

Commission staff hereby revises the October 16, 2020 Staff Report and, thereby, revises its recommended findings in support of the Consent Cease and Desist Order and the Consent Restoration Order to include this addendum.

Deletions are marked by a ~~strikethrough~~ and additions are underlined:

1. Page 3: In total, these unpermitted activities impacted 9.15 acres of native habitat within the Coastal Zone and an additional ~~48.83~~ 17.52 acres outside the Coastal Zone. Within that 9.15 acres of habitat impacted by the Unpermitted Development in the Coastal Zone, an estimated ~~482~~ 183 individuals' specimens of the endangered Braunton's milk-vetch were removed by Respondent.

2. Page 3: The impacted area also includes approximately 2.72 acres of ~~federally listed critical habitat for Braunton's milk-vetch~~ habitat. Included in that 2.72 acres is 1.61 acres of federally listed critical habit for the Braunton's milk-vetch.

3. Page 3: In addition, to mitigate for the temporal loss of habitat, the Consent Orders require Respondent to restore ~~the additional 48.83~~ approximately 17.52 acres of damaged habitat located outside the Coastal Zone, ~~all on~~ approximately 9.68 of those acres is on California Department of Parks and Recreation ("DPR") property.

4. Page 5: In addition, to mitigate for the temporal losses of habitat caused by the Unpermitted Development, Respondent, has agreed to restore ~~the additional 48.83~~ approximately 17.52 acres of sage scrub and chaparral habitat disturbed by Respondent's actions outside of the Coastal Zone along the Temescal Ridge Fire Road.

5. Page 5: In addition to the ~~additional 48.83~~ approximate 17.52 acres of on the ground mitigation proposed to occur, the proposed Consent Orders also provides for the Respondent to pay three payments, totaling \$1,947,500.00.

6. Page 10: Along with those critical species Respondent removed an estimated 183 individual specimens of Braunton's milk-vetch and impacted approximately 2.72 acres of ~~critical habitat for Braunton's milk-vetch~~ habitat. Included in that 2.72 acres is 1.61 acres of federally listed critical habit for the Braunton's milk-vetch.

7. Page 18: In addition, as mitigation and to further resolve Respondent's liabilities for these Coastal Act violations, Respondent agreed to restore ~~the 48.83-acre area~~ an approximate 17.52-acre area, outside of the Coastal Zone, that Respondent damaged during the course of its project.



MOUNTAINS RECREATION & CONSERVATION AUTHORITY
 King Gillette Ranch
 26800 Mulholland Highway
 Calabasas, California 91302
 Phone (818) 878-0866 Fax (818) 878-0508

October 27, 2020

California Coastal Commission
 45 Fremont, Suite 2000
 San Francisco, California 94105-2219

**Support for Consent Restoration Order No. CCC-20-RO-02
 in order to resolve Violation File V-5-19-0109**

Dear Commissioners:

The Mountains Recreation and Conservation Authority (MRCA) supports the California Coastal Commission (Commission) staff report dated October 16, 2020 as related to the Consent Cease and Desist Order No. CCC-20-CD-03 and Consent Restoration Order No. CCC-20-RO-02 in order to resolve Violation File V-5-19-0109.

The Santa Monica Mountains contain coastal sage scrub and chaparral habitats that exist nowhere else on earth. As documented in the staff report, Braunton’s milkvetch (*Astragalus brauntonii*) is a federally-listed endangered species which occurs only in the hills and mountains surrounding the Los Angeles basin.

In order to facilitate the Consensual Resolution as recommended by Commission staff, MRCA is willing to accept the proposed \$1,100,000.00 payment from Los Angeles Department of Water and Power (LADWP) for the purpose of acquiring property of similar ecological value as the impacted properties in the Santa Monica Mountains.

MRCA takes seriously its commitment to habitat preservation and restoration and will work expeditiously to preserve additional habitat areas in the Santa Monica Mountains. Upon the Commission’s approval of the Consent Cease and Desist Order No. CCC-20-CD03 and Consent Resolution Order No. CCC-20-RO-02, the MRCA Governing Board will take action at its next scheduled meeting.

Sincerely,

Paul Edelman
 Chief of Natural Resources and Planning

Addendum Exhibit 1



CALIFORNIA
NATIVE PLANT SOCIETY

2707 K Street, Suite 1, Sacramento, CA 95816-5130 (916) 447.2677 www.cnps.org

Protecting
California's native
flora since 1965

October 19, 2020

California Coastal Commission
455 Market Street, Suite 300
San Francisco, CA 94105-2420
Sent electronically to:

Support for Consent Cease and Desist Order No. CCC-20-CD-03 and Consent Restoration Order No. CCC-20-RO-02

Dear California Coastal Commission,

The California Native Plant Society ("CNPS") is pleased to offer support for Consent Cease and Desist Order No. CCC-20-CD-03 and Consent Restoration Order No. CCC-20-RO-02.

CNPS is a non-profit environmental organization with more than 10,000 members in 35 Chapters across California and Baja California, Mexico. CNPS's mission is to protect California's native plant heritage and preserve it for future generations through the application of science, research, education, and conservation. CNPS works closely with decision-makers, scientists, and local planners to advocate for well-informed policies, regulations, and land management practices.

In July of 2019, I became aware of impacts to Braunton's milk-vetch (*Astragalus brauntonii*) on Temescal Ridge within Topanga State Park caused by the Los Angeles Department of Water and Power (LADWP). This notification came in the form of an email from one of our members, David Pluenneke, who became familiar with Braunton's milk-vetch while hiking on the Temescal Ridge Trail. David previously had sent emails to LADWP, the Los Angeles City Council, and others questioning what could be done to protect Braunton's milk-vetch from damage caused by the grading associated with the ongoing power pole replacement project. These emails, those of a concerned citizen, could have prevented the worst effects of this unpermitted action in the Coastal Zone: the loss of 182 individuals of Braunton's milk-vetch and associated habitat. The actions by LADWP represent a lapse in judgment, a failure to follow state law, and the outright disregard for concerns raised by an informed citizen. Much of this damage could have been avoided.

By the time I became involved, the damage, detailed in the CCC-20-CD-03 & CCC-20-RO-02, had already been done. I immediately recognized the gravity of the situation when Mr. Pluenneke sent me photos taken before and after LADPW bulldozed directly through Braunton's milk-vetch habitat. These actions ultimately affected more than 27 acres of coastal sage scrub and coastal chaparral within Topanga State Park. It should be noted that Braunton's milk-vetch and associated habitats have suffered severe losses throughout their range, and impacts like this within a state park are reprehensible. Following communication with Mr. Pluenneke, I contacted the Coastal Commission,

State Parks, U.S. Fish and Wildlife Service, LADWP, and the media. If Mr. Pluenneke had not reached out to me and others would these damages have remained unnoticed and unmitigated?

I am very pleased with the comprehensive response from state and federal agencies, and the media. This is an example where a concerned citizen raised an alarm, the public became informed, agencies took decisive action, and, finally, meaningful resolution has ensued.

CNPS is happy to support CCC-20-CD-03 & CCC-20-RO-02. We feel strongly that the restoration of 9.15 acres of habitat within the Coastal Zone and 18.83 acres of damaged habitat outside of the Coastal Zone is appropriate. We also support the public benefits that will come from payments totaling \$ 1,947,500 to the Coastal Commission Violation Remediation Fund, California Department of Parks and Recreation, and Mountain and Rivers Conservation Authority. We are especially pleased that \$1,100,000 of these funds will be used to acquire a property that will be conserved in perpetuity for its ecological values.

It is our hope that actions on Temescal Ridge will not only result in the restoration of acres of habitat but will also ensure better management going forward, including but not limited to invasive plant and erosion control and stewardship of rare plants and sensitive ecological resources. Also, it should be an explicit requirement of restoration activities that, in the end, these actions result in the long-term establishment of Braunton's milk-vetch equal to or exceeding the numbers lost as a result of LADWP's actions.

Lastly, we would be encouraged if this unfortunate chain of events resulted in better communication between LADWP and land management agencies so that future projects of this ilk do not proceed without analyses of impacts and the issuance of relevant permits.

We recommend that you approve Consent Cease and Desist Order No. CCC-20-CD-03 and Consent Restoration Order No. CCC-20-RO-02.

Thank you very much for your attention to this issue. Please don't hesitate to contact me with any questions.

Sincerely,



Nicholas Jensen, PhD
Lead Conservation Scientist
California Native Plant Society
2707 K Street, Suite 1
Sacramento, CA 95816
njensen@cnps.org



October 29, 2020

California Coastal Commission
455 Market St. Suite 300
San Francisco, CA 94105

**Re: Consent Cease and Desist Order No. CCC-20-CD-03 and
Consent Restoration Order No. CCC-20-RO-02
Los Angeles Department of Water and Power (LADWP), unincorporated LA County**

Dear Chair Padilla and Commissioners:

The Sierra Club Santa Monica Mountains Task Force supports staff's fine work on Consent Cease and Desist Order No. CCC-20-CD-03 and Consent Restoration Order CCC-20-RO-02 and appreciate the effort required in bringing all parties together on this consent agreement.

The Santa Monica Mountains Task Force, established in 1972, is an activist committee of the Angeles Chapter of the Sierra Club dedicated to encouraging the protection of the Santa Monica Mountains while promoting an understanding and awareness of their natural value. Our goals encompass maintaining open space and acquiring additional parkland. The Task Force has an active outings program to introduce people to recreational enjoyment of the mountains, and build a constituency of park users, who would support Sierra Club efforts to save open space, preserve sensitive watersheds and protect wildlife habitat.

Our task force has been involved with far too many cases of utility companies not using good judgment and failing to comply with the laws, policies, and ordinances that are in place to protect and preserve our finite natural resources. What is quite alarming is that LADWP would even consider bringing this type of destruction into a State Park. Our parks and protected open spaces are scarce and sacred – they deserve our highest level of respect and protection.

We are pleased with the restoration plan for both the land inside the Coastal Zone and the impacted habitat outside of the Coastal Zone. We are also very supportive of the payments totaling \$1,947,500 to the entities detailed in the staff report. The fact that \$1,100,000 will go towards the acquisition of property that will be conserved (and protected!) for the next generations is very exciting and gives us hope for the future.

We join California Native Plant Society in the hope that not only will this restoration will be successful, but that we can count on better management in the future, including heightened stewardship of all of the natural resources in this precious area.

We support staff's recommendations and ask that you approve Consent Cease and Desist Order No. CCC-20-CD-03 and Consent Restoration Order No. CCC-20-RO-02.

Thank you for your consideration of our comments.

Sincerely,

Eric Edmunds

Eric Edmunds
Chair
Sierra Club Santa Monica Mountains Task Force

Addendum Exhibit 3
1 of 1



October 30, 2020

California Coastal Commission
455 Market St. Suite 300
San Francisco, CA 94105

**Re: W8 & W9
Consent Cease and Desist Order No. CCC-20-CD-03 and
Consent Restoration Order No. CCC-20-RO-02
Los Angeles Department of Water and Power (LADWP), unincorporated LA County**

Dear Chair Padilla and Commissioners:

The Sierra Club Save Hobo Aliso Task Force supports Consent Cease and Desist Order No. CCC-20-CD-03 and Consent Restoration Order CCC-20-RO-02.

As this Commission knows, our task force is no stranger to dealing with utility companies that feel entitled to do as they wish to accomplish their goals. Your staff is once again challenged with SCE conducting unpermitted and destructive pole brushing at Hobo Aliso Ridge even after the rigorous CDP process that we all went through to remove the majority of the poles. The unpermitted projects that these utility companies undertake are worrisome and impactful. The projects often result in the destruction of ESHA and wildlife, trespassing onto park or conservation land, doing work without appropriate studies, and a variety of other consequences. It appears as though facing a violation is just part of doing business for them. They see no down side to doing as they please to accomplish their goals, even if it means destruction or impacts to natural resources - - unless these impacts are brought to the attention of the California Coastal Commission. Our thanks to California Native Plant Society for their watchful and caring eye in this situation, and to Coastal Commission staff for their strong follow up work.

Our task force is supportive of the payments totaling \$1,947,500 to the entities detailed in the staff report. As we have requested in the past, we would be interested in follow up reports on when and how the payments are used by the various entities. We appreciate the fact that Commissioner Escalante is an ex officio member of the Santa Monica Mountains Conservancy Board on behalf of the Coastal Commission. Her renowned environmental expertise and ability to promote strong relationships with a wide variety of entities is a true bonus for everyone involved - - especially our natural resources.

One of the most important aspects of any consent restoration order is the actual plan, provisions and deadlines. We have some comments on this portion of the staff report for your consideration.

- Due to the fact that plastic flagging is very often left behind during restoration projects such as this, we recommend the use of biodegradable flagging <http://cspforestry.com/products/presco-biodegradable-roll-flagging-tape.html>.

- With respect to the timeline, we ask that the Commission hold the respondent to the timeline set forward by staff, and that requests for any extensions actually have a “good cause” versus just excuses. Should staff identify requests for extensions to be merely excuses, we request that the \$1000/day/violation be exercised by the Executive Director.

Addendum Exhibit 4

1 of 2

- Monitoring of the site during the process is always very important. We would like to know that the conditions of the plan are being adhered to:
 - Absolutely no mechanized equipment that could result in hazardous releases. The plan calls for hand tools only, so this really should not even be a discussion point.
 - Staging must be done properly to avoid any further damage to the resources.
 - Water quality impacts are always a major concern and if temporary irrigation is going to be used, then water quality has to be closely watched because irrigation systems quite frequently create more problems.

Who will be keeping an eye on this project as it progresses and reporting back to CCC staff?

- On page 11 of the restoration plan it states that, “The Commission understands that annual European grasses have naturalized and does not expect them to be completely eradicated from the Restoration Area.” Has it been determined that these naturalized grasses have not and will not invade areas that should be dominated by native species? Would it be more beneficial to the native habitat to have these grasses completely eradicated during this restoration?
- Is there a specific person or department within State Parks that will be reviewing the Restoration Plan? If so, could that person/department please be identified.
- All narrative reports should be accompanied with date stamped photography as evidence and support. This is covered in the plan, but please make sure that photos are required throughout the entire process.

We not only appreciate California Native Plant Society’s proactive work in this case, but also share in the hope that this order will help defer this type of destruction in the future. Our task force has been dealing with ongoing impacts from SCE for over three years now, so we fully understand how important it is to educate these utility companies and assist in heightening their awareness of their surroundings and increasing their level of stewardship of all the natural resources they come in contact with throughout our state.

We support staff’s recommendations and ask that you approve Consent Cease and Desist Order No. CCC-20-CD-03 and Consent Restoration Order No. CCC-20-RO-02.

Thank you for your consideration of our comments.

Respectfully,



Penny Elia
Task Force Chair, Save Hobo Aliso Task Force
Sierra Club